

THE FREE PRESS
PUBLISHED WEEKLY
By Wm. C. Baxter,
Editor and Proprietor,
No. 100 North Main Street,
Carrollton, Ohio.
Subscription price, \$1.00 per annum in advance.
Single Copies, 10 Cents.
Advertisements, as Usual.
Entered as Second-Class Matter, May 19, 1858.
Post Office at Carrollton, Ohio, under No. 100.
Acceptance for mailing at special rate of postage provided for in Act of October 3, 1917, authorized on July 10, 1918.
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The Carroll Free Press.

"THE UNION OF THE STATES AND THE CONSTITUTION OF THE UNION"

VOL. 26.

CARROLLTON, OHIO, WEDNESDAY, MAY 19, 1858.

NO. 21.

Political-Kansas.

SPEECH OF HON. JOHN A. BINGHAM OF OHIO.

Delivered in the House of Representatives
April 28th, 1858.

Mr. BINGHAM. I congratulate the country that the distinguished gentleman from Georgia [Mr. Serranus] has seen fit on this day to acknowledge what he has heretofore, during the last and present Congress, steadily and repeatedly denied, that the proposition of those with whom I have the honor to sit on this floor and elsewhere, in regard to the power of Congress over the several Territories during the whole time in which they continue to be Territories, and up to the very moment of their transition from a Territory to a State, is the true position under the Constitution of the United States, and one to be recognized and legitimately enforced by congressional legislation.

The gentleman from Georgia predicted his reply to the distinguished and learned gentleman from Maryland, [Mr. Davis], among other things, upon the ground that the Congress of the United States had therefore dictated to the people of Louisiana conditions precedent to their admission into the Union as a State. I desire inasmuch as the gentleman from Georgia made special reference to the Louisiana enabling act, to call the attention of the House and of the country to its provisions, for the purpose of showing that it goes as far as any man on this side of the House has ever ventured to go in respect to the power of Congress over the Territories, and its power to impose restrictions upon the admission of new States into the Union.

I admit that the act of Congress, passed in 1811, to authorize the people of Louisiana to form a State constitution and government and to provide for their admission into the Union, was a just and constitutional enactment, and you admit all that we ask, all that any man can ask, upon which to predicate an argument against the proposition submitted to this House by the committee of conference, appointed through it, and in favor of the power of Congress not only to reject that bill but to reject the Lecompton Constitution under any and all conceivable circumstances.

I do not know, sir, do I care, whether the honorable gentleman from Georgia assumed and asserted the validity of the Louisiana act merely for the occasion, or not. I thank him for his concession that that act was a precedent which he might with propriety quote here against the argument of the gentleman from Maryland. Sir, if the gentleman's admission be right, if that statute be valid, it totally sweeps away the dogma of the sovereignty of new States in the formation of constitutions preparatory to admission, against the expressed will of the whole people of the United States, as set forth by their Representatives in Congress assembled. The admission of the authority of Congress to impose upon new States the restrictions that that statute concedes the right of Congress to reject any new State until it shall have adopted a constitution, not only republican, but also consistent with the Constitution of the United States, and also in conformity with such conditions precedent as Congress may deem just and proper to be imposed. I quote from that statute as follows:

"Sec. 2. And be it further enacted, That all free white male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said Territory at least one year previous to the day of election, and shall have paid a territorial tax, county, district, or parish tax; and all persons having in other respects the legal qualifications to vote for representatives in the General Assembly of the said Territory, be, and they are hereby authorized to choose representatives to form a convention, who shall be apportioned among the several counties, districts, and parishes within the said Territory of Orleans, in such manner as the Legislature of the said Territory shall by law direct. The number of representatives shall not exceed sixty; and the elections for the representatives aforesaid shall take place on the third Monday in September next, and shall be conducted in the same manner as is now provided by the laws of the said Territory for electing members for the House of Representatives;

"Sec. 3. And be it further enacted, that the members of the convention, when duly elected, be, and they are hereby authorized to meet at the city of New Orleans, on the first Monday of November next, which convention, when met, shall first determine, by a majority of the whole number elected, whether it be expedient or not, at that time, to form a constitution and State government for the people within the said Territory; and if it be determined to be expedient, that the convention shall in like manner declare, in behalf of the people of the said Territory, that it adopts the Constitution of the United States; whereupon the said convention shall be, and hereby is, authorized to form a constitution and State government for the people of the said Territory, provided the constitution to be formed, in virtue of the authority herein given, shall be republican and consistent with the Constitution of the United States; that it shall contain the fundamental principles of civil and religious liberty; and it shall secure to the citizen the trial by jury in all criminal cases, and the privileges of the writ of *habeas corpus*, conformably to the provisions of the Constitution of the United States; and that after the admission of the said Territory of Orleans as a State into the Union, the laws which such State may pass shall be promulgated, and records of every description shall be preserved, and its judicial and legislative proceedings conducted, in the language in which the laws and the judicial and legislative written proceedings of the United States are now published and conducted; and provided also, That the said convention shall provide by ordinance, irrevocable without the consent of the United States, that the people inhabiting the said Territory do agree and declare, that they forever disclaim all right or title to the waste or unappropriated lands lying within the said Territory; and that the same shall be and remain at the sole and entire disposition of the United States; and moreover, that each and every tract of land sold by Congress shall be and remain exempt from any tax, laid by the United States, or under the authority of the State, whether for State, county, township, parish, or any other purpose whatever, for the term of five years from and after the respective days of the sale thereof; and that the lands belonging to citizens of the United States, residing without the said State, shall never be taxed higher than the lands belonging to persons residing therein; and that no taxes shall be imposed on lands the property of the United States, and that the river Mississippi, and the navigable rivers and streams leading into the same, or into the Gulf of Mexico, shall be common highways and forever free, as well to the inhabitants of the said State as to other citizens of the United States, without any tax, duty, impost, or toll therefor imposed by the said State."

I am not here to find fault with the arguments of the learned gentleman from Maryland, [Mr. Davis]. I am not here to follow the gentleman from Georgia [Mr. Serranus] with the new lights he has discovered in his way to this political Damascus. The latter gentleman has, if you please, become an ally of the Republicans, he is working (not voting) with us to day. He is agreeing with us that Congress is restricted in nothing but its own constitution and its own judgment, in regard to the limitations which it may rightfully impose, under the Constitution, upon new States, as conditions precedent to their admission into the Union.

To make good my assertion, I need only refer specifically to the limitations imposed by the Louisiana act of 1811, providing for the admission of the Territory of Louisiana, which I have just read, and which the gentleman from Georgia approves, and upon which he takes his stand. That statute, I repeat, goes as far as have ever ventured to go on this question, and as far as any gentleman upon this side has ever ventured to go. I beg the attention of the House to the conditions precedent and restrictions which that act imposes upon the sovereignty of Louisiana. First, there is the condition precedent that before the people of Louisiana, after the election of their delegates to that convention, should take another step towards the organization of a State government, their delegates, in convention assembled, should, in their behalf, declare that they adopt the Constitution of the United States, together, of course, with all its limitations and restrictions upon State sovereignty. Having first performed this condition precedent and not before, they might proceed to form a State constitution; provided, says the statute—

That said constitution be republican, shall be consistent with the Constitution of the United States; shall contain the fundamental principles of civil and religious liberty; shall secure to every citizen charged with a criminal offense a trial by jury; shall secure, also, the writ of *habeas corpus* as provided in the Constitution of the United States; shall provide that the legislative and judicial action of said State be conducted in the English language; shall surrender the right of the State over certain waste lands; also, its right to the United States property.

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